



MEMORANDUM

To: PLANNING COMMISSION **Date:** MAY 22, 2007
From: COMMUNITY DEVELOPMENT DEPARTMENT
Subject: EXCEPTION TO LOSS OF BUILDING ALLOTMENT AWARDED TO
APPLICATION MC-04-10: E. DUNNE-KRUSE

REQUEST

A request for a three year extension of time on three building allotments awarded under the Micro Measure C competition for fiscal year 2006-2007.

RECOMMENDATION

Environmental Assessment: Not Applicable

Application, EOT-07-04: Adopt Resolution: Recommending Council Approval

Processing Deadline: July 1, 2007

BACKGROUND/CASE ANALYSIS

On March 1, 2005 the Morgan Hill Planning Commission awarded three building allotments under the Micro Measure C competition for Fiscal Year 2006-2007. On March 29, 2005 the applicant filed an application for subdivision and development agreement approval which also triggered the need for environmental review. Since the time of application submission, the applicant has been addressing several environmental issues required by the California Environmental Quality Act (CEQA) as explained in the justification letter and below. There are environmental issues remaining that have not been addressed which has delayed approval of this project. Without an exception to the loss of a building permit, the building allotment for this project will expire on June 30, 2007.

Under Section 18.78.125.G of the Municipal Code, the City may grant an Exception to Loss of Building Allocation (ELBA) if it finds that *"the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140, or extended delays in environmental reviews, permit delays not the result of developer inaction, or allocation appeals processing."* (Ord. 1665 N.S. (Part 3), 2004).

As indicated above, the subject property has had a number of environmental issues that the project applicant has been addressing, yet not all environmental have been addressed. The site,

located off of E. Dunne Ave, contains steep slopes where landslide hazards, a mapped fault line, and other geologic hazards exist. These conditions required the identification of more precise building envelopes and a more extensive geologic hazard assessment than is typically required on properties in Morgan Hill. The applicant also desired the use of his own geologist to do the geological assessment which triggered the need for peer review by the City Geologist. This resulted in delays due to incomplete information submitted for review and the need for additional information by the City Geologist in order to complete their required findings. However, it should be noted that the extensive geological conditions that needed to be addressed on the property was a source for a considerable amount of the delays. The peer review findings were submitted to the City on March 8, 2007.

In addition to the geological assessment, there has been a biological resource assessment completed and it has been determined that there is the potential for impacts to State and/or Federally Endangered or Threatened Listed Species. The two species that may be present are the California tiger salamander and California red-legged frog. If present or if the project is deemed to have adverse impacts to the listed species, it may result in the need to obtain "take" permits and/or approvals from the U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Game (DFG). Based on requirements from USFWS, species specific surveys must be conducted to determine the presence or absence of the species.

As described in the applicant's letter, there are certain protocols and requirements for completing the surveys. The CA tiger salamander requires surveys to be conducted during two consecutive breeding seasons between March and May. It also requires 70% of the average rainfall for March which was not met this year due to the unusually dry season. Therefore, the commencement of this survey cannot begin until next March if the conditions can be met and will need to be conducted for a two year period (if an individual species is found during the survey, the survey will stop and take permits and/or other approvals will need to be obtained from the wildlife agencies). The CA Red-legged frog survey, which only requires one year of survey work, could have been conducted this year, however, the applicant is seeking out more time to procure consultants that can provide cost effective services.

The applicant is requesting a 3 year extension of time for the commencement of construction. It is likely that the survey work will require two years of survey work to be completed May 2009. Subsequent to the survey work, there might be a need for consultation with the wildlife agencies and/or the need to establish mitigation for any adverse impacts to the environment. After the completion of the environmental assessment and approval of the tentative map, the applicant will need to address all conditions imposed by the City, and record the final before the commencement of construction. It is likely that these additional processes will each take several months.

Staff recommends the approval of a 3 year extension, however, with the condition that the applicant shall provide staff with a timeline of expected completion dates for the various process phases of the project. The timeline will be used by staff to gauge the applicant's diligence in fulfilling each process requirements and will also benefit the applicant in understanding the process and schedule. Planning staff can assist the applicant on developing the timeline.

RECOMMENDATION

Adoption of the attached resolution recommending City Council approval of the Exception to Loss of Building Allocation

Attachments:

Resolution

Applicant's justification letter dated April 20, 2007

Vicinity Map

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF EXCEPTION TO LOSS OF BUILDING ALLOCATION FOR APPLICATION MMC-04-10: E. DUNNE-KRUSE TO ALLOW FOR A THREE YEAR EXCEPTION TO THE BUILDING ALLOCATIONS RECEIVED FOR THREE UNITS FOR FY2006-2007

WHEREAS, the Planning Commission, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded three building allocations for FY2006-2007 to application MMC-04-10: E. Dunne-Kruse;

WHEREAS, the applicant is requesting a three year exception to the loss of building allocation;

WHEREAS, pursuant to Section 18.78.125.G of the Municipal Code, the City Council may grant an exception to the loss building allotments due to extended delays in environmental reviews;

WHEREAS, the project has had an extensive environmental review due to geological hazard assessments, sensitive biological resource assessments, and other environmental constraints;

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. Granting of the Exception to the Loss of Building Allocation (ELBA). The Planning Commission hereby recommends to the City Council granting the ELBA for MMC-04-10: E. Dunne-Kruse for a three year extension.

SECTION 2. The approval is subject to the following condition:

1. The applicant will provide planning staff with a timeline detailing when process requirements will be fulfilled.

**PASSED AND ADOPTED THIS 22nd DAY OF MAY, 2007, AT A REGULAR MEETING
OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

FRANCES O. SMITH, Deputy City Clerk

ROBERT J. BENICH, Chair

A F F I D A V I T

I, _____, applicant, hereby agree to accept and abide by the terms and
conditions specified in this resolution.

_____, Applicant
(Type Name)

Date: _____

4/20/07

Neil Kruse
4537 Winding Way
San Jose, CA 95129

PLANNING DEPT.

APR 23 2007

CITY OF MORGAN HILL

Community Development Department
c/o James Rowe
17555 Peak Ave.
Morgan Hill, CA
95037-4128

RE: Exception to Loss of Building Requirements - SD-05-04 E. Dunne -
Kruse

1. Reasons for Delay

My project is delayed due to requirements by the city of Morgan Hill to perform lengthy geo-technical surveys and peer reviews. Also, I am being required by the city of Morgan Hill to perform multi-year biological surveys for the tiger salamander and red legged frog. These surveys were required late in the development cycle by the city and cannot commence this year due to below average rainfall.

2. Why The Approved Project Has Not Been Constructed or Commenced Within the Time Period Allotted.

The project is delayed due to additional surveys that are required by the city of Morgan Hill.

3. The Amount of Time Requested.

I am requesting a 3 year extension - to May of 2010.

The survey for the the tiger salamander requires 2 breeding seasons with at least 70% average rainfall. Therefore the completion of the Tiger Salamander survey work will likely not be able to be completed until the end of May 2009 at the soonest, assuming there are no further delays due to weather.

4) Provide a Chronology of Events Describing Activities that Have Occurred Since Project Approval.

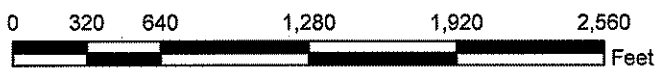
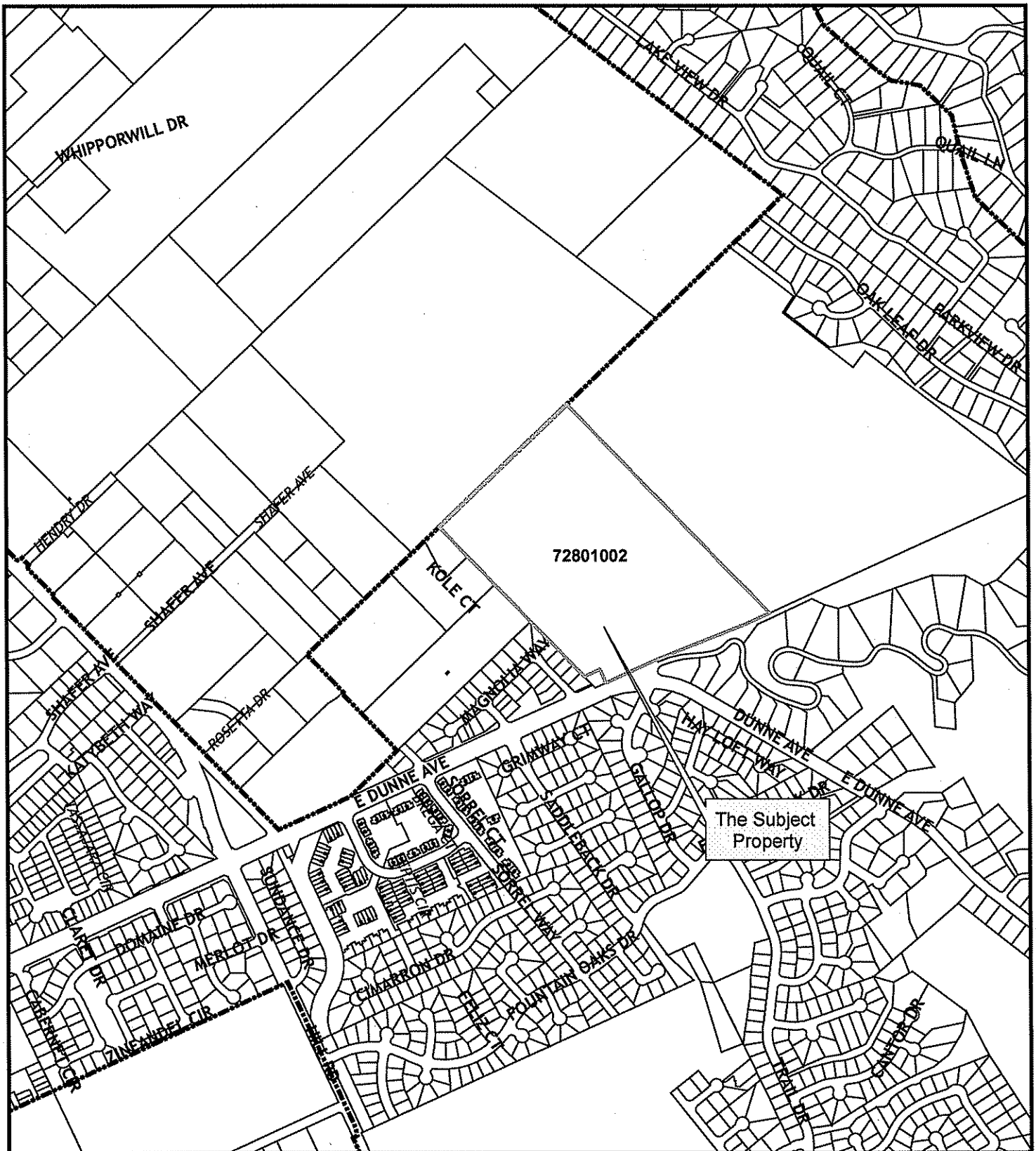
January 2007 - Additional Geo technical surveys and peer reviews were performed.

February 26 2007 - Meeting with City staff and Biological survey staff from HT Harvey that outlined additional survey requirements for the red legged frog and tiger salamander.

Sincerely,



Neil Kruse



MMC-04-10: E. Dunne-Kruse

Vicinity Map

